

REMARKS

Claims 18-23 are pending.

The Notice alleges that Applicants should submit an argument under the heading "Remarks" pointing out disagreement with the Examiner's contentions and discuss the references applied against the claims, explaining how the claims avoid the references or distinguish from them.

Applicants disagree as there are no rejections of record against the claims submitted in Applicants' response of March 29, 2007. Nevertheless, without conceding the correctness of this notice, applicants here discuss how the claims avoid the references or distinguish from them.

Original claims 1-14 were rejected under 35 U.S.C. 102(b) as being anticipated by Buntine (Statistics and Computing (1992) Volume 2, pages 63-73).

Buntine is directed to learning classification trees. The Office Action alleges that Buntine teaches or suggests each and every element of the claimed invention. Applicants respectfully disagree with the Examiner's assessment of the cited reference in view of the present claims.

The standard for anticipating a claim is clearly outlined in MPEP 2131, and this standard is further supported by the Courts. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1978). "The identical invention must be shown in as complete detail as is contained in the claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Buntine fails to satisfy this criteria, and thus fails to anticipate the claimed invention.

Applicants note that claims of the instant application comprise one or more nodes representing metagenes predictive of lymph node metastasis. Buntine does not disclose or teach metagenes predictive of lymph node metastasis. Accordingly, Buntine fails to teach or suggest each and every element of the claimed invention, and thus fails to satisfy the criteria necessary to undermine the patentability of the claimed invention.

CONCLUSIONS

In view of the above amendment, Applicant believes the pending application is in condition for allowance.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 18-1945, from which the undersigned is authorized to draw, under Order No. DU-P02-002.

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Respectfully submitted,

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